

TYPE II DEVELOPMENT & ENVIRONMENTAL REVIEW, STAFF REPORT & DECISION

Form DS1401



Project Name: HAZEL DELL TOWNE CENTER

Case Numbers: PST2004-000013

Legal Description: Tax Lots 29 (145790), 84 (145305), and 153 (145371) in the Northeast and Southeast quarters of Section 3, Township 2 North, Range 1 East of the Willamette Meridian

Request: Post decision review (pst) to defer original conditions B-13 and D-11 of Examiner's decision (CUP2002-00002 & PSR2002-00013) until after occupancy of buildings in the SE quadrant of the development

Applicants: Kimco Developers, Inc.
Attn: Kurt Kurti
8383 Wilshire Blvd., Suite 950
Beverly Hills, CA 90211
Phone - (360) 576-1889

Owner: Hazel Dell Towne Center of Washington, LLC
See applicant for owner contact

Contact: Miller Nash LLP
Attn: Meridee Pabst
P.O. Box 694
Vancouver, WA 98666
Phone - (360) 699-4771, **E-mail -** meridee.pabst@millernash.com

Location: 507 NE 88th Street

DECISION

Approval, subject to conditions

Team Leader Initials: _____ **Date Issued:** _____

County Review Staff:

	<u>Name</u>	<u>Phone Ext.</u>	<u>E-mail Address</u>
Planner:	Richard Daviau	4895	richard.daviau@clark.wa.gov
Engineer:	Ali Safayi	4102	ali.safayi@clark.wa.gov
Engineer: (Trans. Concurrency):	Richard Gamble	4384	richard.gamble@clark.wa.gov
Team Leader:	Susan Ellinger	4272	susan.ellinger@clark.wa.gov
Eng. Supervisor:	Richard Drinkwater, P.E.	4492	richard.drinkwater@clark.wa.gov

Comp Plan Designation: MU (Mixed Use)

Zoning: R-43 (Multi-Family Residential), CL (Limited Commercial), C3 (Community Commercial)

Applicable Laws:

Clark County Code Sections: 12.05A (Transportation); 12.41 (Concurrency); 13.08A (Sewerage); 13.29 (Stormwater and Erosion Control Ordinance); 13.40 (Water); 15.12 (Fire); Title 18 (Zoning); Title 20 (SEPA); Comprehensive Plan, Arterial Atlas

Neighborhood Association/Contact:

NE Hazel Dell Neighborhood Association - Bud Van Cleve, 1407 NE 68th Street, Vancouver, WA 98665

Cougar Creek Neighborhood Association - Clayton Rhodes, 213 NW 94th Street, Vancouver, WA 98665

Time Limits:

The application was submitted on April 8, 2004 and determined to be fully complete on April 29, 2004. The County requirement for issuing a decision within 78 days lapses on July 16, 2004. The State requirement for issuing a decision within 120 calendar days lapses on August 27, 2004.

Vesting:

An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference (PAC) is required, the application may earlier contingently vest on the date the fully complete PAC is filed. A PAC was not required; therefore, the application is vested on the fully complete submittal date of April 8, 2004.

Public Notice:

Notice of application was mailed to the applicant, the Neighborhood Association, and property owners within 300 feet of the site on May 13, 2004.

Public Comments:

The County has received a several comment letters from area neighbor with concerns regarding inadequate buffers separating Tax Lots 109, 111, and 110. The applicant's post decision request only opens the original review on the issue of deferring NE 7th Avenue improvements. Staff does not have the authority to require additional buffering of Tax Lots 109, 111, and 110.

Project Description

The applicant gained preliminary approval to construct a mixed-use development consisting of 417,816 square feet of commercial building area and 96 residential units on a 42-acre site. Previous post decision reviews include the following modifications:
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- Allow fee payment in lieu of construction of improvements to the NE 20th Avenue/NE 134th Street intersection in pursuant to developers agreement signed by the Board of County Commissioners
- Addition of Staging plan relating to the timing of some improvements in the overall development schedule
- Relocation of improvements in the southwest quadrant of the development (area bound by NE Hazel Dell Avenue, NE 90th Street, NE 5th Avenue and NE 88th street)
- Modification to Condition D-11 relating to transportation improvements on NE 7th Avenue and NE 99th Street
- Modification of building layout for the southeast quadrant of the development (area bound by NE 5th Avenue, NE 90th Street, I-5, and NE 88th street)

The applicant now proposes further modification to Condition D-11 relating to transportation improvements on NE 7th Avenue and NE 99th Street.

Major Issues and Analysis

Staff first analyzed the proposal in light of the 16 topics from the Environmental Checklist (see list below). The purpose of this analysis was to identify any potential adverse environmental impacts that may occur without the benefit of protection found within existing ordinances.

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|---------------------------------|--|
| 1. Earth | 9. Housing |
| 2. Air | 10. Aesthetics |
| 3. Water | 11. Light and Glare |
| 4. Plants | 12. Recreation |
| 5. Animals | 13. Historic and Cultural Preservation |
| 6. Energy and Natural Resources | 14. Transportation |
| 7. Environmental Health | 15. Public Services |
| 8. Land and Shoreline Use | 16. Utilities |

Then staff reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts will be mitigated by the requirements of the code.

Staff 's analysis also reflects review of agency and public comments received during the comment period, and knowledge gained through a site visit.

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposed development comply with the applicable code requirements, and, therefore, are not discussed below.

LAND USE:

Finding 1

Planning staff has no concerns with the proposed pst.

TRANSPORTATION CONCURRENCY:

Finding 2 – Concurrency

County concurrency staff has reviewed the post-decision review request for the Hazel Dell Towne Center (HDTC). The applicant is requesting that condition D-11 of the initially approved development (PSR2002-00013) be deferred until after several buildings in the south area of the site have been constructed. This request is in addition to a previous approval of a post-decision review (PST 2003-00006) to defer the same improvements until construction of the Target building plus one additional building.

For the initial application (PSR2002-00013), the applicant submitted a traffic study in accordance with CCC 12.41.050(A) and a large number of trips were vested to the development. As justification for approval of the post-decision review, the applicant has performed an analysis to determine if there would be any concurrency failures or safety deficiencies by delaying the connection of NE 7th Avenue and its related improvements at the intersection with NE 99th Street. The following paragraphs document two transportation issues for the proposed development.

Finding 3 – Concurrency Compliance

Due to the large number of trips that were reserved with this development, and as demonstrated in the traffic study dated April 7, 2004, along with county staff analysis, the proposed deferral of the mitigation would not result in a concurrency failure. The proposed post-decision review and deferral of condition(s) B-13 and D-11 for buildings in the southern portion of the project would continue to allow the development to comply with the concurrency ordinance CCC 12.41. As a result, the initial conditions for B-13 and D-11 may be modified to allow the deferral requested by the applicant. (see conditions of approval C-1 and C-2)

Finding 4 – Safety

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 12.05.230. This code section states that “nothing in this chapter shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Chapter 12.41 CCC or a *significant* traffic or safety hazard *would be caused or materially aggravated* by the proposed development: provided that the developer may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.”

Left turn lanes at NE 99th Street and NE 7th Avenue - A condition of the original approval (D-11) to provide dual westbound left turn lanes on NE 99th Street at NE 7th Avenue was required due to the westbound left-turning vehicles backing into the westbound through-movement lanes. The nexus for requiring this improvement was due to the increased westbound left-turning movements at this intersection for vehicles going to HDTC causing a significant safety hazard.

With the proposed deferral of the NE 7th Avenue roadway construction, the need for dual westbound left turn lanes is not justified. There would be no nexus for HDTC to construct additional turn lanes because vehicles could not get to or from HDTC using NE 7th Avenue. In addition, traffic analysis indicates that without the NE 7th Avenue connection,

there is a lower probability of vehicular conflict with the westbound left turning vehicles backing into the through-movement lanes. However, in the event that HDTC later connects NE 7th Avenue, there would be a significant safety hazard, and the dual westbound left turn lanes on NE 99th Street would need to be operational per condition of approval C-2, below.

ENGINEERING:

Finding 5

The project has received a conditional use permit and preliminary site plan approval (CUP2002-00002; PSR2002-00013). The applicant is requesting a modification to condition of approval D-11. This condition requires the applicant to perform offsite improvements at the intersection of NE 99th Street and NE 7th Avenue.

Conclusion

The proposed changes do not warrant any new conditions of approval triggered by the provisions of the Transportation Standards, CCC 12.05A, and Stormwater and Erosion Control Ordinance, CCC 13.29. Therefore, the project will be required to comply with the conditions of approval pertinent to these code sections, as indicated in the issued Final Order and the approved post decision reviews.

COMPLIANCE WITH PREVIOUS APPROVAL:

Finding 6

Except as modified within this post decision review, all applicable findings and conditions of the original Hearings Examiner Decision (CUP2002-00002; CPZ2002-00008; PSR 2002-00013 and related cases) apply and should be met (see Condition A-5).

DECISION

Based upon the proposed plan and the findings and conclusions stated above, the Development Services Manager hereby **APPROVES** this request, subject to the following conditions of approval:

Conditions of Approval

Conditions that must be met prior to Final Site Plan approval

- A-1 Except as modified within this post decision review, all applicable findings and conditions of the original Hearings Examiner Decision (CUP2002-00002; CPZ2002-00008; PSR 2002-00013 and related cases) apply and shall be met as appropriate (see Finding 6).

B. Conditions that must be met prior to Occupancy Permits:

- B-1 Condition B-13 of the initial development approval shall be modified to state that "Engineering plans shall conform to the applicable road standards except as

otherwise provided pursuant to the road modifications approved herein. It is recognized that the alignment and geometry of NE 7th Avenue may change upon further design studies by C-TRAN. In the event that the final location of 7th Avenue cannot be constructed due to permitting or right of way constraints on the C-TRAN property, the temporary road along the existing NE 7th Avenue right of way or an alternative alignment shall be constructed. This construction shall occur prior to the issuance of any occupancy permits, excluding the Target building and the other building in the southwest quadrant. This shall also exclude shop 'H', the buildings marked as Major 'C', 'D', 'E', and 'F', and the building marked as Retail/Serv 'I' on the revised site plan (Exhibit 8)." (See Finding 3 and 4)

- B-2 Condition D-11 of the initial development approval shall be modified to state that "The applicant shall ensure that dual westbound left turn lanes, and associated receiving lanes on NE 7th Avenue, along with replacement of the existing traffic signal system as necessary, are constructed on NE 99th Street prior to the issuance of any occupancy permits, or as modified by the director of Public Works. This condition shall not apply to the Target building, the buildings identified as shops 'J' and 'H', the buildings marked as Major 'C', 'D', 'E', and 'F', and the building marked as Retail/Serv 'I' on the approved site plan." (See Finding 3 and 4)

Note: The Development Services Manager reserves the right to develop a complete written report and findings of fact regarding this decision, if appealed.

An **appeal** of any aspect of this decision may be appealed to the County Hearing Examiner only by a party of record. A "Party of Record" includes the applicant and those individuals who submitted written testimony to the Development Service Manager within the designated comment period.

The appeal shall be filed with the Department of Community Development within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record. This decision was mailed on July 16, 2004. Therefore any appeal must be received in this office by 4:30 PM, July 30, 2004.

APPEAL FILING DEADLINE

Date: July 30, 2004

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 18.600.100 (A) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;

3. The specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. A check in the amount of **\$1,070** (made payable to the Department of Community Development).

The appeal request and fee shall be submitted to the Department of Community Development, Customer Service Center, between 8:00 AM and 4:30PM Monday through Friday, at the address listed below.

A copy of the approved preliminary plan and Clark County Code are available for review at:

**Public Service Center
Department of Community Development
1300 Franklin Street
P.O. Box 9810
Vancouver, WA 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011**

A copy of the Clark County Code is also available on our Web Page at:
Web Page at: <http://www.clark.wa.gov>